

Devarsons Private Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-22-1984

Reported in : (1984)(17)ELT135TriDel

Appellant : Devarsons Private Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This matter is being heard and disposed of in accordance with the directions given by the Hon'ble High Court of Gujarat in the Order and judgment delivered on 28-7-1983 in S.C.A. No. 444 of 1978. By the said order, the Court quashed and set aside the Order-in-Revision No.1425/77, dated 25-7-1977/4-8-1977 passed by the Government of India in the revision petition filed by Devarsons Pvt. Ltd. (hereinafter called Devarsons, for brevity's sake) against the Order-in-Appeal No. V 9(14) 2-2/OA/71/1841/ Bombay dated 19-2-1974 passed by the Appellate Collector of Central Excise, Bombay. The Court remanded the matter to this Tribunal for deciding it afresh in the light of the evidence and the material that may be produced on the questions indicated in their Lordships' judgment dated 28-7-1983 and after giving an opportunity of hearing to the parties afresh. Copies of the order and the judgment were forwarded to this Tribunal by the Deputy Registrar of the High Court on 6-10-1983.

2. At this stage, and before setting out the questions referred to above, it will be useful to set out briefly the facts of the case.

Devarsons are engaged in manufacturing oil and spirit soluble colours.

These goods used to be classified in the Central Excise Tariff Schedule (CET) under item No. 14-I (1)(5) ("Pigments, colours, paints and enamels, not otherwise specified") and exempted from duty under Central Government's Notification No. 23/55, dated 29-4-1955 in terms of serial No. 6 thereof which read: "Lake colours and pigment dye stuffs". By the Finance Act of 1961, a new item 14-D was inserted in the CET reading : "14D-Dyes derived from coal tar and coal tar derivatives used in any dyeing process, all sorts." This entry was substituted by the following one by the Finance Act, 1962, with effect from 24-4-1962 : "14D-Synthetic organic dyestuffs (including pigment dyestuffs) and synthetic organic derivatives used in any dyeing process." It appears that sometime in 1963, the oil soluble colours were sought to be classified under item No. 14-D. However, the Assistant Collector by an order of 17/18-3-1964, ordered classification of the product under item 14-I (1)(5), eligible for exemption under notification No.23/55. This state of affairs continued upto 1970 when, in the wake of Baroda Collectorate Trade Notice No. 232/1970, dated 22-8-1970 (to the effect that oil or spirit soluble colours were liable to be classified as synthetic organic dyestuffs under item No. 14-D GET). Devarson filed a classification list (C.L.) of 21-11-1970 under item No. 14-D CET), Devarson filed classification list (C-L) of 21-11-1970 under item No.14-D under protest. On 26-12-1970, the Supdt. of Central Excise called upon Devarson to show cause why they should not pay the sum of Rs. 23,920.15 being the differential amount of duty on the product in question cleared during the period 4-9-1970-14-10-1970 with reference to item No. 14-D CET. The notice invoked Rule 10 read with Rules 173-J and 173-Q(d) of the Central Excise Rules, 1944 (hereinafter called "the Rules"). After holding adjudication proceedings, the Assistant Collector confirmed the said demand vide his order dated 14-4-1971. The matter was pursued in appeal by Devarsons. In his Order-in-Appeal dated 14-2-1974, the Appellate Collector held that- (i) The show cause notice (SCN) dated 26-12-1970 was within the prescribed time-limit of one year and was not time-barred with respect to the clearances for the period 4-9-1970-4-10-1970.

(iii) the subject products fell within the scope of item No. 14-D CET, and rejected the appeal.

The matter was further pursued by Devarsons in revision. In the Order-in-Revision dated 25-7-1977, the Central Government held that solvent colours are synthetic organic dyestuffs (S.O. dyestuffs) intended to impart colour to the medium in which they are soluble.

Irrespective of their use, the goods in question were S.O. dyestuffs falling under item 14-D CET. In the result, the revision application was rejected.

3. Thereafter, Devarsons filed a Special Civil Application (No. 444 of 1978) in the Gujarat High Court praying that the aforesaid orders of the Assistant Collector, Appellate Collector and Government of India be quashed and set aside, restraining the Department permanently from recovering duty as the oil soluble colours manufactured by the petitioner under item No. 14-D, CET and directing the Department to refund the duty recovered under item 14-D on the oil soluble colours manufactured and cleared.

4. By its order dated 26-7-1983, the Hon'ble High Court of Gujarat allowed the petition, quashed and set aside the impugned order dated 25-4-1977/4-8-1977 of the Government of India and remanded the matter back to this Tribunal. It is thus that this matter has come up before us. The Court, in its order, said that Devarson was paying duty under protest which it would continue to pay. Their Lordships further observed that they found it difficult in view of the paucity of the material on the record before them to conclude that the product in question was S.O. dyestuff. The Court identified the following as relevant questions in the dispute for determination by this Tribunal :- (a) What is the precise distinction between S.O. dyestuff and pigment dyestuff (b) Whether the product of the petitioner is S.O. dyestuff or pigment dyestuff or colours other than dyestuff or pigment (d) Whether the product of the petitioner can be used for dyeing of fabric (e) In any view of the matter, is it necessary that the product should be capable of being used for dyeing of fabrics in order to be within the purview of entry 14-D The parties were permitted to adduce oral as well as documentary evidence in support of their rival claims and to produce extracts from authoritative books.

5. We have thus to hear and dispose of afresh the revision petition filed before the Government of India which now stands remitted to us, in the light of the questions

identified by the Court.

6. Devarson has filed paper books while the Respondent has not. We have heard at length both parties. The hearings took place on 30-12-1983, 28-3-1984 and 29-3-1984. On the first date of hearing (30-12-1983), Shri Parekh, the learned Counsel for Devarson submitted that the appellant had not been furnished with copies of the results of the tests conducted by the Department on samples of the disputed products drawn at different stages, the report furnished to the Department by the National Chemical Laboratory and the basis of the trade notice, i.e. the expert opinion given by the Chief Chemist and the DGTD. The Respondent was directed by the Bench to furnish these documents by 15-2-1984. The Departmental Representative submitted that he had received the paper book filed by the appellants only on 26-12-1983 and that he wanted some time to study them. In the circumstances, the hearing was adjourned to 6-3-1984 but could not take place till 28-3-1984 owing to certain reasons. At the resumed hearing, the SDR stated that owing to the long lapse of time, the documents asked for were not available, they having been destroyed. The DGTD's and the Chief Chemist's opinions were also not available. He would, therefore, proceed without the help of these documents. However, Shri Parekh submitted an affidavit together with an uncertified copy of the report dated 8-2-1980 of the National Chemical Laboratory, Pune. After the conclusion of the hearing, Shri Parekh submitted on 11-4-1984 brief notes on the case law cited.

7. The salient points in the submissions of the learned Counsel for Devarsons may be summarised thus- (i) It would be seen from the history of events that Devarsons' claim that the subject goods fell under Item 14-I(5) was accepted though not the claim for exemption. In July 1969, the classification list showing the goods under item 14(I)(5) was approved by the Supdt.

(ii) On 24-12-1970, the Supdt. issued a show cause notice calling upon Devarsons to pay up the short levy of duty for the period 4-9-1970- 14-10-1970 on the basis that the goods were classifiable under item 14-D. Item 14-D was inserted in the Tariff in 1961 and amended in 1962.

(iii) The phrase "used in any dyeing process" in item 14-D qualified "S.O. dyestuffs", "Pigment dyestuffs" and "S.O. derivatives". The Department's contention that it qualifies only "S.O. derivatives" is not correct. Even if it be correct, "dyestuff" means a substance used in any dyeing process. Dyestuffs are used in textiles and they have to be water-soluble for this purpose. Devarsons' subject products are insoluble in water but soluble in selected natural or organic synthetic solvents. They are not capable of dyeing any fibre or substrate since they have no affinity for the same. They are used for colouring soap, petrol, plastics, etc. They are not, therefore, dyestuffs nor are they used in any dyeing process. Their correct classification is, therefore, under Item 14-I(5) and not 14-D.

(iv) Items 14 and 14-D are mutually exclusive. Oil soluble colours fall under Item 14-I(5). If they are held to fall under Item 14-D, then part of Item 14-I(5) would be rendered redundant-a construction to be avoided.

(i) Since the insertion of item 14-D in the CET in 1961 and till 1970 the Department accepted the position that the goods in question fell under Item 14 and not 14-D. In view of this long standing practice, it is not permissible for the Department to deviate from it unless there is a change in the character of the goods-1982 E.L.T. 607. The goods have always been described and accepted by the Department as oil and spirit soluble colours. The trade notice dated 22-8-1970 (page 58 of the paper book) does not give any¹ reason for the reclassification of the goods under Item 14-D.

(ii) The Gujarat High Court, after considering the material before it, came to a prima facie conclusion (page 46) that the products classified in item 14-D have a common characteristic of being soluble in water although the Court did not express a final opinion on the point. No material has been filed by the Department to alter this prima facie view. On the other hand, Devarsons have led voluminous evidence in the shape of affidavits of experts.

(iii) If the Department's stand is accepted, items 14-I(1) (ii), 14-I(2) (iii) and 14-I(4) would become redundant.

(iv) Since two views are possible, one held by the Department also till 1970 and the other put forward by Devarsons, the benefit should go to the appellants.

9. Taking up the questions posed by the Gujarat High Court, the learned Counsel submitted as follows : 9.1. Question No. 1.-What is the precise distinction between synthetic organic dyestuff and pigment dyestuff Devarsons contended that oil soluble colours (or solvent colours) are insoluble in water but soluble in selected natural or synthetic organic solvents. They are not capable of dyeing any fibre or substrate since they have no affinity for the same.

The Customs Co-operation Council Nomenclature (CCCN) Explanatory Notes (page 478, volume 2) have been cited. It is stated therein that synthetic organic dyes are also used to prepare inter alia colour lakes (heading 32.06), colours (32.09 and 32.10), inks (32.13) and for colouring plastics, rubber, waxes, oil, photographic emulsions, etc.

This has been set out to show that such S.O. dyes are not classified as S.O. dyestuff (including pigment dyestuffs) under heading 32.05.

Many authorities have been cited to support the contention that "dyeing" is used almost exclusively with reference to textiles, paper and leather. According to the "Encyclopaedia of Chemical Technology" by Kirk-Othmer (Volume VII, page 506), "The term is hard to define, but the proper sense of the word has a deeper meaning than just imparting colour to the fibre. The colour must be uniformly distributed throughout the fibre and not superficially applied as in painting; it must be more or less permanently fixed. Dyeing merges into staining when the colour is used temporarily for fibre identification and into painting when the colourant is superficially applied, and is held in place by a binding agent. In dyeing, the medium is almost invariably water because of its suitable properties, its availability and its economy. In painting, the medium used is a suitable thickener in which the dye is dissolved or dispersed." In "Dyes and their Intermediates" by E.N. Abraham (page 30), it is stated that- "Among the many uses for solvent dyes are the manufacture of stains, vernishes, transparent lacquers, inks, copying papers, typewriter ribbons and for the colouration of candles, sealing waxes, polishes and surface finishes. They are also used for the mass colouration of moulding powders, synthetic polymer compositions and for colouring soap, cosmetics, petrol, fuel oils and the preparation of signalling smokes." "Solvent colours. There

are many applications for which dyes are required to be soluble in an organic solvent. Materials coloured by such dyes vary widely and include wood stains, varnishes, lacquers based on nitro cellulose, cellulose acetate or a synthetic resin, polishes for floors or leather, candles, printing inks of certain types, both pen inks, carbon papers, typewriter ribbons, petroleum... candles, soap and foodstuffs. Solvent dyes are also used in moulding powders, for mass colouration of various plastic materials and in coloured smokes for military signals. Sometimes the dye is simply dissolved in the substrate as in the colouring of wax for candles, but an organic solvent may be used as a vehicle, as in the application of spirit stains to wood.

Solvent dyes resemble pigments in that they are usually insoluble in water, but since they are used in solution their properties are not greatly affected by their physical condition." "Oil soluble dyes are insoluble in water but are more or less soluble in organic solvents, including alcohol.

These dyes are used for colouring motor fuel, waxes, wood and plastics. The largest use of dyes dissolved in non-polar solvents is in colouring motor fuel.

Other use of oil-soluble dyes are decorative effects as in plastic articles, wax candles and shoe polish." 9.2. Question No. 2.- Whether the product of the petitioner is synthetic organic dyestuff or pigment dyestuff or colours other than dyestuff or pigment Devarsons' products are not used for dyeing process. Hence, they cannot be called "dyestuff"-neither S.O. dyestuff nor pigment dyestuff. They are synthetic organic colours-they fall within the category of "pigment". Nor are they synthetic organic derivatives.

The authorities referred to under Question No. 1 were relied upon.

Particular reference was made to the following extract from "Dyes and their Intermediates" by Abrahart (page 30) : "(a). In general, pigments are inert, stable, coloured substances, insoluble in water, which are used for imparting colour by incorporation within an article during manufacture e.g. mouldings from an evenly coloured mass of plastic material or by surface application in the form of paint.

(b) Solvent dyes, as the name implies, are those soluble in organic solvents." The subject products are dyes but not dyestuffs since they are not used in dyeing. The meaning of "dye" and "dyestuff" in several dictionaries were referred to show that dyestuffs are used in dyeing while dye is only a colouring material.

9.3, Question No. 3.-What is the possible use of the product of the petitioner (i) their oil soluble colours are used for colouring of soap, oils, hair oils, plastics, waxes, petroleum products and producing coloured smoke for defence. These uses are the ones described in "Dyes and their Intermediates" by Abrahart as also "Colour Chemistry" by R.L.M. Allen and "Chemistry of Synthetic Dyes and Pigments" by LUBS; (ii) the sale bills as also purchase orders at page 178-227 of the paper book would show that the purchasers are basically manufacturers of soap, petroleum products and colour smoke for defence-Tata Oil Mills Co., Indian Oil Corporation, Bharat Petroleum Corporation, Hindustan Petroleum Corporation, Assam Oil Co., Ayurved Ashram, Udaipur, Hindustan Lever, Cochin Refineries, Godrej Soap, Hindustan Polymers, Ammunition Factory, Kirkee.

A few affidavits have been produced. One is from a dealer in S.O dyestuffs and oil soluble colours to show that the latter are not sold as dyestuffs nor are they used or can be used for dyeing fabrics or yarn. An affidavit from a technical expert has also been produced to show that Devarsons' oil-soluble colours are neither S.O. dyestuffs nor pigment dyestuffs since they are not used for dyeing of textile fabrics, leather, paper, jute, etc.; these are used for colouring, by directly dissolving then in suitable solvents. Certificates have been produced from the National Chemical Laboratory, Pune explaining the use of oil soluble colours or solvent dyes-viz., not for dyeing of textiles but for colouring of soaps, petroleum products, plastics, etc.

Reference was also drawn to Baroda Collectorate Trade Notice No..

232/1970 which said that oil or spirit soluble colours were classifiable as "S.O. dyestuffs" under item 14-D without, however, explaining the basis for this conclusion. The evidence adduced by Devarsons, according to the Counsel, clearly showed that their oil soluble colours were not S.O. dyestuffs.

9.4. Question No. 4.-Whether the product of the petitioner can be used for dyeing of fabric The material referred to under Question No. 3 was relied on and it was submitted that it had been amply established that Devarsons' products cannot be used for dyeing of fabrics.

9.5. Question No. 5.-In any view of the matter, is it necessary that the product should be capable of being used for dyeing of fabrics in order to be within the purview of Entry 14-D While not pleading estoppel, Shri Parekh submitted that, for several long years, the Department had accepted Devarsons' claim that their products which were not capable of being used for dyeing of fabrics did not fall under Item 14-D. Referring to the words employed in items 14 and 14-D, it was urged that only such pigments as are used in dyeing process would fall under item 14-D as "pigment dyestuffs", and "dyestuffs", according to renowned dictionaries connote dyes or colours for dyeing of fibrous materials-textiles- by solution or dispersion in water.

In common parlance also, "dyeing" refers to only dyeing of fibrous materials. On the other hand, colouring of petrol, plastic, soap, etc.

with the help of oil soluble colours is not called "dyeing" but "colouring".

If all S.O. dyestuffs are covered by item 14-D, there would be considerable overlapping between 14-D and 14-I(1) (ii), 14-I(2) (iii) and 14-I (4).

10. The points put forth in the learned SDK's submissions may be summarised thus- (i) The issue for consideration is whether Devarsons' products fall under item 14 as contended by them or 14-D as contended by the Department.

"Both sides agreed that the Tribunal is not required to go into the question of applicability of notification No. 23/55 to the products." (ii) The disputed products are not soluble in water and they are not generally used for dyeing of textile fabrics.

(iii) The words "used in any dyeing process" in item 14-D do not connote dyeing of textiles fabrics only. The use of the word 'any' gives the phrase a wide and unrestricted amplitude. In any event, these words qualify only "synthetic organic

derivatives" and not "synthetic organic dyestuffs (including pigment dyestuffs)". If the words were meant to qualify both, there would be a ', ' (comma) before "used in any dyeing process".

(iv) The purchase orders filed by Devarsons would show the products were described as "dyes" (e.g. page 181, 227 of the paper book).

(The Tribunal observes that these are not isolated instances. A number of other purchase orders at pages 173, 179, 189, 191, 193, 197, 201, 209, 217 of the paper book describe the goods as "Dye".

Many others do not show the description "dye"). This would show that the goods were understood by the sellers and the buyers as "dyes".

(v) The distinction between "colours" and "dyes" is that colours are applied directly-they are insoluble in the medium which is used merely as a vehicle to keep the colour in suspension. Whereas dyes-are required to be applied through a medium in which they are dissolved. Dyes cannot be applied directly. Attention was drawn to para 6 of the Assistant Collector's counter (additional) affidavit dated 7-7-1980 to this effect.

(iv) The technical authorities cited by Shri Parekh do not say that dye-stuffs dye only textile fabrics, though that may be their normal use. If a product is not soluble in water, but is soluble in another solvent and is used in dyeing other articles, it would not cease to be a dye.

Speciality dyes (for paper, leather, printing) are included in "dyes" as may be seen from the extracts from Kirk-Othmer's "Encyclopaedia of Chemical Technology" at page 157 as also from Abrahart's "Dyes and their Intermediates" at page 158 of the paper book. The certificate of the National Chemical Laboratory, Pune dated 8-2-1980 also recognises solvent colours as S.O. dyestuffs.

(vii) There can be no doubt in the circumstances that Devarsons' products are dyes. Item 14-D is more specific for dyes than 14. The goods are correctly classifiable under item 14-D. Since the subject oil soluble colours are used in dyeing, they would fall under item 14-D, applying the ratio of the Bombay High

Court decision in Sudarshan Chemicals, Ltd. v. Union of India and Ors.-1979 E.L.T. (J 275).

(viii) The fact that the Department delayed classification of the goods under item 14-D is no argument against the correct classification of the goods. The Department is demanding duty only for the period prescribed by limitation.

11. In his reply, the learned Council for Devarsons made the following points- (i) In 1978 E.L.T. 275, what the Court said was the goods must be predominantly or commonly used and not rarely or occasionally used in dyeing process to justify classification under item 14-D.12. We have given careful consideration to the contentions of both sides and have also perused the record.

13. In the background against which the present matter has come to be heard by us, it would be useful and expedient to go by the questions identified by the Hon'ble High Court for determination by us. But before we do so, it will be advantageous to discuss some aspects of the matter after which it may be relatively easier to answer the questions.

"Synthetic organic dyestuffs (including pigment dyestuffs) and synthetic organic derivatives used in any dyeing process." It is urged by Shri Parekh that phrase "used in any dyeing process" qualifies all the three commodity groupings preceding it, viz. (i) "S.O. dyestuff" (ii) "Pigment dyestuff" and (iii) "S.O. derivatives".

Shri Dakshmi Kumaran, on the other hand, contends that the phrase qualifies only "S.O. derivatives". We are inclined to agree with the Departmental Representative. If the phrase was intended to qualify all the three groupings, there ought to have been a (,) (comma) before the phrase. Apart from this, the very word "dyestuff" connotes something used in dyeing or used to dye. It would be wholly superfluous to say "dyestuff used in any dyeing process". We are, therefore, of the view that the phrase qualifies only "S.O. derivatives". In this view, we do not consider it necessary to go into the D.R.'s contention that "any" dyeing process would include even a process for dyeing of articles other than textiles.

15.1. Question No. 1 : What is the precise distinction between synthetic organic dyestuff and pigment dyestuff 15.2. Discussion on this question is to a large extent connected with that on Question No. 2. We have referred to, at length, several authorities, including the Customs Cooperation Council Nomenclature and its Explanatory Notes. The C.C.C.N. and its notes do not, in terms, spell out the distinction between "S.O. dyestuffs" and "Pigment dyestuffs".

The differentiation sought out to be brought out by Devarsons between these two groups on the one hand and solvent dyes on the other is based on the footing that dyestuffs are necessarily soluble (or can be made soluble) in water and are used in dyeing textiles. As we shall show later, this distinction is untenable and not supported by technical authorities. However, based on the definition of pigments in standard works of reference (to which we shall be adverting later), it could be said that S.O. dyestuffs are substances which are soluble in water (most textile dyes are) or in other solvents (the present goods: solvent dyes are of this category) and, in the dissolved condition, are used to dye or colour other materials (e.g. textiles, leather, paper, petroleum products, etc). Pigment dyestuffs, on the other hand, may be to be pigment-based dyes, pigments being inert, stable, insoluble in water and substantially insoluble in any medium but which can be mechanically dispersed in the medium. Now, item 14 CET covers certain types of pigments-zinc oxide, titanium dioxide, etc., water pigment finishes for leather, dispersed organic pigments, ordinarily used for the printing of textiles (whether in the form of powder, paste or in emulsion) etc. While no material has been placed before us to arrive at a clear-cut answer to the question, we would say that the pigment dyestuffs included in item 14-D are those which, in the first place, are synthetic organic substances and do not fall in the categories of pigments specified in item 14. The whole of item 14-D, as the terminology clearly indicates, deals with only synthetic organic substances. Inorganic pigments would be outside the purview of item 14-D. So, pigments (essentially insoluble in solvents) which are synthetic organic substances and which find use in dyeing may be said to be the "pigment dyestuffs" in item 14-D. S.O. dyestuffs, on the other hand, are applied for dyeing or colouring purposes in the dissolved condition.

16. Having said this, we would like to mention that, for the present case, the precise scope of "pigment dyestuffs" does not appear to us to be of significance because, as we shall show later, the products under dispute are appropriately described as "synthetic organic dyestuffs".

And, this is what we shall now attempt to do in the succeeding paragraphs.

16.1. Question No. 2 : Whether the product of the petitioner is synthetic organic dyestuff or pigment dyestuff or colours other than dyestuff or pigment 16.2. The Customs Cooperation Council Nomenclature (C.C.C.N) is an internationally recognised tariff nomenclature for classification of goods under the Customs Tariff. India has also patterned the 1976 Customs Tariff Schedule essentially on the C.C.C.N. Though the Explanatory Notes to the C.C.C.N. have no legal force, they afford a valuable aid to the interpretation of the terms used in the tariff. It is true that the Central Excise Tariff is not, unlike the Customs Tariff, patterned on the C.C.C.N. However, there are certain items in the Central Excise Tariff which use terminologies identical with or similar to those employed in the C.C.C.N. and the Customs Tariff. To the extent relevant, therefore, and provided the express words do not connote a contrary or different meaning, the terms employed in the excise tariff items which are analogous to those used in the C.C.C.N. or Customs Tariff may, in our opinion, be interpreted with the aid of the C.C.C.N. Explanatory Notes. Now, let us examine the scope of the phrase "S.O. dyestuff (including pigment dyestuff)" which occurs in item 14-D CET and heading 32.05 of the C.C.C.N. At page 478, Volume I (Second edition), the C.C.C.N. Explanatory Notes say : "Synthetic organic dyes may be soluble or insoluble in water. They have almost completely replaced natural organic colouring materials, particularly for printing or dyeing textiles, dyeing hides and skins, paper and wood. They are also used to prepare colour lakes (heading 32.06), colours falling under heading 32.02 and heading 32.10, inks under heading 32.13 and for colouring plastics, rubber, waxes, oils, photographic emulsions, etc." Colour lakes are preparations insoluble in water, obtained by fixation of natural colouring matter (animal or vegetable) or synthetic organic dyestuffs (whether or not soluble in water), on a base, generally mineral (barium sulphate, calcium sulphate, aluminium oxide, china clay, talc, silica, siliceous fossil earth, calcium carbonate, etc.).

The fixation of the colouring matter on the base is usually obtained by : (1) Precipitating the colouring matter on the base with precipitating agents (tannin, barium chloride, etc.), or by co-precipitation of the colouring matter and the base.

(3) Intimate mechanical mixing of an insoluble colouring matter with the inert base.

Varnishes and Lacquers; Distempers; Prepared water pigments of the kind used for finishing leather; Paints and enamels; pigments dispersed in linseed oil, white spirit, spirits of turpentine or other media of a kind used in the manufacture of paints or enamels; stamping foils; dyes or other colouring matter in forms or packings of a kind sold by retail; solutions as defined by note 4 of this chapter.

Artists', Students' and Signboard painters' colours, modifying tints, amusement colours and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings, including such colours in sets or outfits, with or without brushes, palettes or other accessories.

16.3. Two things emerge from the above. First, S.O. dyestuffs need not be necessarily water-soluble. They may be insoluble in water, as in the present case. Second, S.O. dyestuffs are inter alia used for colouring plastics, rubber, waxes, oils, photographic emulsions, etc. The goods in the present case find use in colouring plastics, waxes, petroleum products, soap, oils, hair oils and producing coloured smoke for defence. Shri Parekh's contention that S.O. Dyestuffs used for the aforesaid purposes are not covered by heading 32.05 is not borne out by the explanatory notes. The excluded S.O. dyestuffs, as may be seen from the description of headings 32.06, 32.09, 32.10 and 32.13 are not dyes of the kind we are concerned with in the present case. Heading 32.06 deals with colour lakes which is not relevant for our purpose. Heading 32.09 includes therein quite a few of the goods covered by item 14- "Pigments, colours, paints, enamels, varnishes, blacks and cellulose lacquers" but not S.O. dyestuffs of the kind we are concerned with. Heading 32.10 clearly again is not relevant nor is heading 32.13.

16.4. Thus, the C.C.C.N. notes, far from helping the appellants, go to show that S.O. dyestuff used for colouring products such as candles, petroleum products, plastics, etc. are covered by the term "synthetic organic dyestuffs".

16.5. Now, let us look at the other authorities cited. These authorities (Thorpe's "Dictionary of Applied Chemistry"-page 156 of the paper book; Kirk-Othme's "Encyclopaedia of Chemical Technology"-page 157 of the paper book, etc.) no doubt say that the term "dyeing" is used, in the main, with reference to textiles, paper and leather and that in textile dyeing is not the only kind of dyeing recognised by technical authorities. In "Colour Chemistry" by R.L.M. Allen (page 160 of the paper book), there is a passage on "solvent colours" (the present goods are variously described by the appellants as oil soluble or spirit soluble colours or soluble dyes). It says that "there are many applications for which dyes are required to be soluble in an organic solvent. Materials coloured by such dyes vary widely and include...candles, petroleum, soap and foodstuffs. Solvent dyes are also used in moulding powders, for mass colouration of plastic materials and in coloured smoke for military signals." To the same effect are passages from "The chemistry of synthetic dyes and pigment" by H.A. Lubs (page 161 of the paper book) where oil (organic solvents, alcohol) soluble dyes are shown to have the aforesaid uses.

"Condensed Chemical Dictionary" by Gessner G. Hawley say at page 399 (10th edition)- "dye, solvent. Any of several organosoluble dyes used in plastics, printing inks, cosmetics, etc., as well as for polyester and other synthetic fibres. They are chemically related to disperse dyes. The solvents used are such chlorinated hydrocarbons as 1, 1, 1-trichloroethylene, trichloroethylene, and perchloroethylene. Use of solvent dyes avoids the necessity of fine-grinding and gives ideal dispersion. (The term 'solvent dye' is somewhat misleading, as it would apply equally well to dyes that are soluble in water)." McGraw-Hill Encyclopaedia of Science & Technology (pages 420-429, volume 4) inter alia has classified dyes based on the materials to which they are applied. Oils, lubricating oils, gasoline, waxes, candles, plastics, rubber, soaps, cosmetics, coloured smokes for military application (as in the present case) are some of the listed applications of dyes.

16.7. From the foregoing discussion, it is clear that goods of the type we are concerned with in the present case are recognised and described in technical books as dyes, solvent dyes. Since the goods are admittedly synthetic organic substances, they are, in our view, synthetic organic dyes. Shri Parekh has sought to draw a distinction between a dye and a dyestuff. According to him, the latter

term connotes a substance used for dyeing textiles which the former does not. And, since the term used in item 14-D CET is "S.O. dyestuff", the present goods- not being dyestuffs since they are not used to dye textiles- are not covered by the expression. We do not find any warrant to hold that "dye" and "dyestuff" connote different things. New Websters Dictionary of the English Language says : "Dyestuff-colouring matter used in dyeing". McGraw-Hill Dictionary of Scientific and Technical Terms says : "Dye (Chem)-A coloured substance which imparts more or less permanent colour to other materials, also known as dyestuff".

It is clear, therefore, the two terms "dye" and "dyestuff" are used interchangeably to connote one and the same thing.

"Dyeing, as the term is generally understood, occurs only when the dye is in solution, usually in an aqueous medium. Some dyes whose solubility is small are called disperse dyes, because they are dispersed rather than dissolved in the water. Some colourants, called pigments, are completely insoluble; they are melted together with synthetic resins to impart colour before the synthetic fibres are extruded. Synthetic textiles such as nylon are coloured in this way. (The term colourant is used to describe both dyes and pigments.) At the present time, dyeing from non-aqueous solvents, called simply solvent dyeing, shows considerable promise as a low-cost process that conserves water and reduces pollution." Again, at page 1102, the following passage occurs in respect of "Solvent dyeing" : "Solvent dyeing. Serious consideration has recently been given to methods of dyeing in which water as the medium is replaced by solvents such as the chlorinated hydrocarbons used in dry cleaning.

There are a number of technical advantages in solvent dyeing, apart from the elimination of effluent (pollution) problems associated with conventional methods of dyeing and finishing. Advantages include more rapid wetting of textiles, less swelling, increased speed of dyeing per given amount of material, and savings in energy, because less heat is required to heat or evaporate perchlorethylene, for example, than is needed for water." At page 1104, there is a detailed write up of non-textile applications of synthetic colourants. It is stated that oils are coloured by dyes that dissolve in solvents rather than those dissolved in water. In respect of

soaps, it is stated that selected pigments and a few acid and basic dyes are used. It is further stated that hair dyes are chiefly in the class of substituted amines known as oxidation colours.

A number of relatively simple dyes are made from anthra-quinone sublime on heating to give strongly coloured smokes and are used for military signalling and other purposes. In respect of photography, it is stated that 4 main types of dyes are used together with a nomenclature of the types.

At page 1105, it is stated that technically dyestuffs are soluble in the¹ medium in which they are applied whereas pigments are insoluble.

At this stage, we may also note, as we have already stated, that the present goods are described by the appellants themselves in the purchase orders/ sale bills as "dyes".

16.8. At one stage, it was contended that the present solvent dyes are pigments. Now, according to "Textile Terms and Definitions" published by the Manchester Textile Institute "pigment" is defined as- "a substance in particulate form, which is substantially insoluble in a medium but which can be mechanically dispersed in this medium to modify its colour and light scattering properties." According to New Websters' Dictionary, "pigment" is "a colouring matter or substance; specif., a dry substance, usu., pulverized, which when mixed with a liquid in which it is somewhat insoluble becomes a paint, ink or the like." Thus, one of the distinctive features of a pigment is that it is substantially insoluble in the medium which acts only as a dispersion medium. The solvent dyes we are concerned with are admittedly soluble in alcohol or other solvents. They are, therefore, not similar in nature to pigments.

16.9. We, therefore, answer Question No. 2 by saying that Devarsons' products are synthetic organic dyestuffs. They are not pigment dyestuffs or colours other than dyestuff or pigment.

17. Question No. 3 : What is the possible use of the product of the petitioner 17.1. From the documentary evidence placed before us, it is clear that the goods are

sold to manufacturers of soaps, hair oils, petroleum products, plastics, waxes. Defence Deptt. etc. No evidence has been shown regarding sale to textile mills. Nor has such use been alleged by the Department. We may, therefore, safely take it that the use of Devarsons' solvent dyes are as claimed, viz. for colouring soap, hair oils, petroleum products, etc. This gains support also from the National Chemical Laboratory's certificate that solvent dyes find use, not in dyeing of textiles, but in colouring of soaps, petroleum products, plastics, etc.

18. Question No. 4 : Whether the product of the petitioner can be used for dyeing of fabric 18.1. No direct evidence is available on the record save the certificate of the National Chemical Laboratory referred to under Question No. 3. However, it has been shown that the goods are, in fact, used by consumers other than textile mills. The affidavits filed by Devarsons also go to show that the goods do not find use in textile dyeing.

19. Question No. 5 : In any view of the matter, is it necessary that the product should be capable of being used for dyeing of fabrics in order to be within the purview of Entry 14-D 19.1. We have already shown that dyes used not only in textile dyeing but also those used in colouring petroleum products, soap, plastics, etc. fall within the expresion "S.O. dyestuffs" and, therefore, they fall under item 14-D. It is not necessary that a product should be capable of being used for dyeing of textile in order to be within the purview of item 14-D, CET.20. Now we shall deal with the case law cited before us by both sides.

Shri Parekh has relied upon a number of decisions in support of the proposition that if there is any ambiguity in a fiscal statute, the benefit should go to the assessee. In 1980 ELT 3 (Bom.) in the case of Deepak & Co., the Bombay High Court held that if two views are possible regarding classification of a product, the benefit must go to the tax payer. The Court also observed that mere change of opinion of an officer without any basis is not sufficient to conclude that the earlier orders were incorrect. Reliance was placed on AIR 1960 SC 1175 (CIT Ahmedabad v. Karam Chand Prem Chand Ltd., Ahmedabad) in which the Court held that if there is any ambiguity of language of a provision, the benefit of that ambiguity must be given to the assessee. In 1982 ECR 901 D (Delhi) (Tata Iron &

Steel Co. Ltd. v. Union of India and Ors.), the Delhi High Court observed that in fiscal matters, if two interpretations are possible, the interpretation more favourable to the subject should be adopted. We are not referring to other citations to the same effect. The present case, in our opinion, is not one where it can be said that there was ambiguity in the language of the expression used in the Central Excise Tariff. Item No. 14-D covered synthetic organic dyestuffs and solvent dyes, as we have shown, are synthetic organic dyestuffs. It is true that even after the introduction of this item in the Central Excise Tariff, the Departmental authorities, for whatever reason, continued to assess the present goods under Item No.14 and not Item 14-D. This, however, would not lead to the conclusion that there was ambiguity in the meaning of the words used in Item No.14-D. When the Department realised that its action in classifying the present goods under Item No. 14 was not sustainable after the introduction of item No. 14-D, they tried to correct the position. In the process, regular adjudication proceedings were held and opportunity was given to the appellants to put forth their case. The lower authorities came to the conclusion that item No. 14-D and not item No.14 was the correct item. In the process the Department is seeking to recover the duty on goods cleared prior to the date of the show cause notice only for that period which is permitted in terms of the limitation provision, namely, Rule 10. Certainly, it cannot be urged that an incorrect practice of assessment must be allowed to continue only because the Department was acting according to that incorrect practice for a fairly long period of time. Of course, the Department could not have reclassified the goods without proper notice and proper adjudication proceedings. We do not find any infirmity in the proceedings adopted by the lower authorities on this score.

21. The Departmental Representative, on his part, cited the Bombay High Court decision in Sudarshan Chemicals Ltd. case-1979 ELT J 275. In this judgment, the Court held that item No. 14-D would take in only those synthetic organic derivatives whose ordinary main or predominant use is in a dyeing process. We have already held that the present goods fall within the meaning of "synthetic organic dyestuffs". They are not synthetic organic derivatives and we do not think that the decision cited has any relevance.

The decision of the Delhi High Court in the Hindustan Aluminium Corporation Ltd. v. Supdt. Central Excise, Mirzapur and Ors.-1981 ELT 642 (Del.) was also cited. In this judgment, the Court held that it is only when there is some equivocation or ambiguity about a word or a provision that the rule of strict construction or narrow construction in favour of a subject in fiscal matters is to be applied. The Court further held that it would not be correct to equate the principle of strict construction applicable to penal statutes imposing punishment and imprisonment with statute imposing taxes and duties. As we have stated elsewhere, we do not see any ambiguity in item No. 14-D. What the Department sought to do was only to correct an erroneous practice of assessment and this they did after giving opportunity to the appellants. It is, therefore, not a case where the theory of the benefit, of ambiguity in the taxing provision goes in favour of the assessee.

22. Shri Parekh also urged before us that in accordance with Central Board of Excise & Custom's Circular F. No. 100/4/75-CX-3 dated 13-4-1976, organic chemicals should be taxed under item 14 D only when they are commercially recognised and used in India in dyeing and enquiries should be made in this regard from the Textile Commissioner, Textile Research Association, National Chemical Laboratory, etc. A copy of the instructions has been produced before us. The instruction was in the context of orthotoluidine, an organic chemical which has multifarious uses in textile printing, dyes, vulcanization, accelator and organic synthesis. Evidently, it is a synthetic organic derivative and hence the instructions to the Collectors.

23. Summing up, we hold that the products under consideration, which are variously described as oil or spirit soluble colours or solvent dyes are "synthetic organic dyestuffs" within the meaning of item 14-D of the Central Excise Tariff Schedule.

25. I agree with my learned brother Sankaran that the appeal should be rejected.

26. The most essential thing in this problem is the understanding of what is a dye. There is a common misunderstanding that a dye is different from a dyestuff. The two are one and the same; the one term is used interchangeably with the other. Technology does not recognize the two words as denoting different substances.

27. All dyes are used as colours or colourants; but not all colours/ colourants are used as dyes. Although dyeing is popularly associated with colouring of fibrous material, it is really a process that is applied to many other non-fibrous substances. In general, a dye must penetrate the substrate : it must suffuse and mingle with it so intimately that the entire dyed material is coloured. It cannot be removed without more or less destroying the substrate or dyed material; it becomes part of the coloured or dyed material.

28. Dyes are used to colour textile fibres, rubbers, plastics, metals and many other products. In the 1950's a new revolutionary type of dye was developed known as the reactive dye : this could form physico-chemical bonds with cellulose, thus binding itself permanently in a way no common dye could. These dyes are now the most commonly used types in colouring cellulose based fibres. Dyes are also used to colour soaps, liquids, leather, paper, metals. In all these cases, it is noteworthy that the dye cannot be separated from the dyed soap, textile fibres, aluminium, paper etc.

29. A pigment is a substance that imparts colour, but in a way different from that of a dye. Many pigments are metallic inorganic substances and from the industrial point of view, these account for the largest proportion of pigments used, though some organic pigments are also used. Pigments must have colouring ability to hide, to impart aesthetic appeal, to protect. Pigments are deposited on the surface of the material to be coloured as a constituent of other substances, the principal one being the carrier or vehicle or the medium. This is the liquid that dries on application leaving a smooth protective film. The other constituents are the thinner, and, in some cases, extenders or fillers. Without the polymerising film forming resins, the pigments will not be held on the surface. However, unlike dyes, a pigment that is a constituent of a coating preparation such as a paint, does not penetrate the material coated or coloured. It can be removed by scraping and other coating/paint can be applied to give the surface a new or different coat of paint or colour.

30. Pigments insoluble in any solvents e.g. carbon black, frequently partake of the character of dyes. Rubber obtains its characteristic black colour from the fine

dispersion of carbon black which, in addition, to its pigmentation properties, is also a unique reinforcing agent for rubber.

31. The black in black plastics are mostly carbon black. This substance is also widely used as a pigment in printing inks, carbon paper.

32. Paper is tinted or dyed by colourant being mixed at the pulp stage in the beater, although surface dyeing may also be carried out. Both dyes and pigments are used as colouring agents, but the colouring is always referred to as dyeing the paper, not as colouring the paper. But consider ink. Ink has a pigment which is deposited from suspension on the surface of the paper to represent printed characters. The difference between the dye property and the pigment property is illustrated by the fact that the ink can be removed to a certain extent to allow a fresh deposit of ink character on the surface, but the dye cannot be removed by any means whatever and still leave the paper reasonably intact.

33. There are natural pigments that are used in processes that are essentially dyeing. For instance, chlorophyll, the pigment that gives plants their characteristic green colour, is used to colour soaps, oils, cosmetics, confectionery. This pigment, in certain forms, is soluble in organic solvents. But ..another pigment, also an organic one, carbon black, is insoluble in any known solvent: it is used in processes that are, scientifically speaking, dyeing, such as .rubber colouring. To repeat, a dye becomes a part of the article that it colours; but a non-dye colour (paint, stain, ink) does not become a part of the article coloured.

34. It makes little difference whether the colourant is soluble in water or other organic solvent, or whether the colourant is called a pigment or a dyestuff. No distinction has yet been found between dyes and pigments that is valid in all respects. The colours/colourants manufactured by M/s. Devarsons all have the characteristics of dyes.

They become insparable part of the article they colour. They may not be used in dyeing of .fibrous materials, but dyeing is not confined to this process alone, though it is the most widely known process. They are synthetic organic substances.

